

REMARKS/ARGUMENTS

This Amendment and Response is responsive to the final Office action dated August 21, 2008.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action.

Prior to entry of this Amendment and Response, claims 1-22, 24 and 36-38 are pending, with claims 1, 6, 19, 21, 22 and 24 being independent and claims 7-18, 21 and 22 being withdrawn from consideration. By this Amendment and Response, claims 1 and 24 are amended, claims 21 and 22 are canceled, without prejudice to or disclaimer of the subject matter recited therein, and claims 39-44 are added. Accordingly, after entry of this Amendment and Response, claims 1-20, 24 and 36-44 will be pending, with claims 1, 6, 19 and 24 being independent and claims 7-18 being withdrawn from consideration.

I. **Rejection under 35 U.S.C. § 102**

The Office Action rejects claims 1-5, 24 and 36-38 under 35 U.S.C. § 102(b) over U.S. Patent Application Publication No. 2001/0016542 to Yoshimura. The Assignee respectfully traverses this rejection.

Independent claim 1 recites an exercise apparatus comprising, *inter alia*, an interconnection assembly operably connecting the first treadle assembly and the second treadle assembly such that pivotal movement of the first treadle assembly in a first direction causes pivotal movement of the second treadle assembly in a second direction opposite of the first direction. As amended, claim 1 further recites that the interconnection assembly includes an adjustment mechanism configured to adjust a level of at least one of the first treadle assembly and the second treadle assembly.

Independent claim 24 similarly an interconnection member operably connected with the first treadle assembly and with the second treadle assembly such that pivotal movement of the first treadle assembly in a first direction causes pivotal movement of the second treadle assembly in a second direction opposite of the first direction. As amended, claim 24 also recites that the interconnection assembly includes an adjustment mechanism configured to adjust a level of at least one of the first treadle assembly and the second treadle assembly.

The Assignee respectfully submits that Yoshimura fails to teach or suggest these claimed features.

As described in Yoshimura, "treadles" R formed by movable frames 77, 78, rollers 79, 80, and endless belts 81, 82 are switched between a "walking exercise" configuration and a "stair climbing exercise" configuration by pivoting a switching lever 83 to cause rear portions of the "treadles" R to be raised by springs 83a. In the "walking exercise" configuration, a cam piece 83b of the switching lever 83 actuates keeper levers 84 mounted to the frames 77, 78 of the "treadles" R. As illustrated in Figs. 5(A), 5(B) and 5(C), the cam piece 83b is engaged with the keeper levers 84 to maintain the respective keeper lever 84 out of contact with the respective belt 81, 82 of the "treadles" R. As illustrated in Figs. 6(A) and 6(B), the cam piece is disengaged (dislodged) from the keeper levers 84 such that a keeper portion 84a of each keeper lever 84 is elastically pressed against the respective belt 81, 82. (See paragraphs [0036] and [0037] and figures 5(A), 5(B), 5(C), 6(A) and 6(B) of Yoshimura.

Thus, from this disclosure of Yoshimura, it should be understood that the "interconnection means 83-84" relied on in the Office Action is not operably connected with the first and second "treadles" R such that pivotal movement of the first "treadle" R in a first direction causes pivotal movement of the second "treadle" R in a second direction opposite of the first direction. The only function of the "interconnection means 83-84" disclosed in Yoshimura is to engage and disengage the belts 81, 82 of the "treadles" R so that the exercise device switched between the "walking exercise" configuration (in which the belts 81, 82 are free to move about the rollers 79, 80) and the "stair climbing exercise" configuration (in which the belts 81, 82 are held by the keeper levers 84 against movement about the rollers 79, 80). Thus, the Assignee respectfully submits that the Office Action appears to improperly ignore the operation of the structures described by Yoshimura and thus appears to incorrectly attribute the features of the recited interconnection assembly to structures disclosed by Yoshimura.

Additionally, the Assignee respectfully submits that Yoshimura fails to teach or suggest any structure that arguably corresponds to an adjustment mechanism of an interconnection assembly as recited in independent claims 1 and 24. The Assignee respectfully submits that Yoshimura provides no disclosure regarding any adjustment of a level of a treadle assembly, let alone via an adjustment mechanism of an interconnection assembly.

Therefore, the Assignee respectfully submits that each of independent claims 1 and 24 is patentable over Yoshimura. The Assignee respectfully submits that claims 2-5 and 36-38 are patentable over Yoshimura at least in view of the patentability of claims 1 and 24 from which they respectively depend, as well as for the additional features they recite. Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejection over Yoshimura.

The Office Action rejects claims 1-5, 24, 36 and 37 under 35 U.S.C. § 102(b) over U.S. Patent No. 6,461,279 to Kuo. The Assignee respectfully traverses this rejection.

As amended, each of independent claims 1 and 24 recites an exercise apparatus comprising, *inter alia*, an interconnection assembly that includes an adjustment mechanism configured to adjust a level of at least one of the first treadle assembly and the second treadle assembly with an increase in length of the adjustment mechanism increasing the level of the first treadle assembly and/or the second treadle assembly. The Assignee respectfully submits that Kuo fails to teach or suggest these claimed features.

The only adjustment described in Kuo is with respect to “adjusting the bars 24 relative to the arm 70, according to the configuration or the location of the treadmills 20, 30.” (column 4, lines 4-9) The Assignee respectfully submits that a person skilled in the art would understand from this disclosure that the adjustment taught by Kuo is to facilitate alignment of the bars 24 with the respective treadmills 20, 30 for mounting purposes.

Further, even if the adjustment of the bolts 72, 73 were to be performed after the bars 24 are mounted to the respective treadmills 20, 30, which Kuo does not teach, the Assignee respectfully points out that an increase in length of either assembly (bolts 72, 73 and nut 74) would not result in an increase of the level of one of the treadmills 20, 30.

Therefore, the Assignee respectfully submits that each of independent claims 1 and 24 is patentable over Kuo. The Assignee respectfully submits that claims 2-5, 36 and 37 are patentable over Kuo at least in view of the patentability of claims 1 and 24 from which they respectively depend, as well as for the additional features they recite. Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejection over Kuo.

II. Rejection under 35 U.S.C. § 103

The Office Action rejects claim 38 under 35 U.S.C. § 103(a) over Kuo in view of U.S. Patent No. 5,626,539 to Piaget et al. (Piaget) and over Yoshimura in view of Piaget. The Assignee respectfully traverses these rejections.

The Office Action cites Piaget only for its alleged disclosure of “treadle resistors” connected below the treadles. As such, the Assignee respectfully submits that Piaget does not remedy the shortcomings of Kuo and Yoshimura with respect to the features of independent claim 1 discussed above.

Therefore, the Assignee respectfully submits that claim 38 is patentable over any permissible combination of Piaget and Kuo or Yoshimura at least in view of the patentability of

Appl. No. 10/789,294
Reply to Office Action of August 21, 2008

claim 1 from which it depends, as well as for the additional features it recites. Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejections over Piaget in combination with Kuo and Yoshimura.

II. Conclusion

After entry of the above listing of claims and remarks, claims 1-20, 24 and 36-44 remain in the application. In accordance with the amendments and arguments set forth herein, the Assignee respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance

The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Should any issues remain that the Examiner believes may be dealt with in a telephone conference, he is invited to contact the undersigned at the number below.

Respectfully submitted,

Date: November 21, 2008

By 
Klifton L. Kime, Attorney Reg. No. 42,733
DORSEY & WHITNEY LLP
370 Seventeenth Street, Suite 4700
Denver, Colorado 80202-5647
Tel.: (303) 629-3400
Fax: (303) 629-3450

USPTO Customer No.: 80705